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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,258	10/08/2003	Patrick J. Whelan	9793-004	8251

7590

12/13/2004

MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, OR 97205

EXAMINER
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WILSON, LEE D

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/682,258

**Applicant(s)**

WHELAN, PATRICK J.

**Examiner**

LEE D WILSON

**Art Unit**

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 6-7, 9-10, 13, 15-17, 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Carver (1568442).

Carver discloses a pry tool having a working end and resting portion (top of fig.4 above 20 which is an elongated portion), a handle (28) with a projection (12), a receiver (22&23) which has multiple offset angles.

In regard to the method claim, this is merely the natural use of the claimed tool.

3. Claims 1-3, 5-7, 9-10, 12-13, 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuo (5931063).

Kuo discloses a pry tool having a working end and resting portion (11 & 18 above 14 which is an elongated portion), a handle (20) with a projection (21), a receiver (16&15) which has multiple offset angles.

In regard to the method claim, this is merely the natural use of the claimed tool.

4. Claims 1-3, 5-7, 9-10, 12-13, 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Suekage (5996448).

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Suekage discloses a pry tool having a working end and resting portion (34&36 above 31 which is an elongated portion), a handle (2&20) with a projection (24), a receiver (32) which has multiple offset angles.

In regard to the method claim, this is merely the natural use of the claimed tool.

5. Claims 1-3, 7-10, 14, 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Spirer (5871204)

Spirer discloses a pry tool having a working end and resting portion (54&52 above 74 which is an elongated portion), a handle (30) with a projection (32), a receiver (78) which has multiple offset angles.

In regard to the method claim, this is merely the natural use of the claimed tool.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spirer (5871204)

a. Spirer discloses the claimed invention except for eight pointed star pattern in a ratchet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made a ratchet with a eight pointed star pattern, since it has been held to be within the general skill of a worker in the art to select a known part on the basis of its suitability for the intended use as a matter of obvious design choice.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McBride and Foster et al disclose a device.

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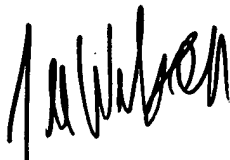
Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE D WILSON whose telephone number is 571-272-4499. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOSEPH HAIL can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ldw

December 6, 2004



LEE D. WILSON  
PRIMARY EXAMINER